IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of		)
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	Alireza Dabagh, et al.	)
		)
Patent No.:	7,209,971	)
		)
Serial No.:	10/020,286	) Art Unit
		) 2157
Filed:	December 11, 2001	)
		)
Conf. No.:	8376	)
		)
For:	ARCHITECTURE AND RUN-TIME	)
	ENVIRONMENTS FOR NETWORK	)
	FILTER DRIVERS	)
		)
Examiner:	Yves Dalencourt	)
		)
Customer No.:	47973	)

DECLARATION OF COLBY C. NUTTALL

I, Colby C. Nuttall, declarant herein, hereby state the following:

1.   I am an attorney with the law firm of Workman Nydegger, which had responsibility for filing and prosecuting the above-identified patent (the "Application") from the filing date of December 11, 2001 until the present.

2.   I make this declaration based upon my own personal knowledge, and based upon records maintained by Workman Nydegger in the ordinary course of business, to which I have access in the course of fulfilling my duties for the firm and its clients.

3.   On December 4, 2008, I received a communication from Ms. Jennifer Everhard of Microsoft Corporation, the Assignee of the Application, noting that a review of the file of the

Application, by the Assignee, appeared to indicate that a Request for Non-Publication was filed with the Application and that corresponding foreign cases were later filed, but that no Rescission of the Request for Non-Publication could be found in the file.

4. After receipt of Ms. Everhard's communication, I investigated this matter and concluded that: (i) a Request for Non-Publication was filed with the Application when filed; (ii) that neither the USPTO file wrapper nor our file for the Application contained a rescission of the Non-Publication Request; and (iii) corresponding foreign applications had been filed, the earliest of which was the filing of an application on December 2, 2002 with the Argentine Patent Office. It was at this time (shortly after the communication of December 4, 2008) that it appeared to me that a statutory abandonment had occurred forty-five days after the filing of the Argentine application, pursuant to statute. Since the abandonment of the Application occurred by statute, up to this time and to the present, no notice of abandonment has been received from the USPTO by our office for the Application.

5. I then investigated this matter to determine why no rescission of the Request for Non-Publication was submitted to the USPTO for the Application prior to proceeding with the aforementioned foreign counterpart filings.

6. Pursuant to the policies and procedures of Workman Nydegger, all incoming documents and correspondence, including that received from the USPTO, which are delivered to the offices of Workman Nydegger are sent directly to Workman Nydegger's docketing department. In addition, when a patent application is filed, the file for that application is immediately routed to Workman Nydegger's docketing department.

7. Workman Nydegger's docketing department reviews all documents and files directed to it for relevant information and for any dates or deadlines contained or referenced therein. The docketing department then generates reminders based upon this review, so that relevant reminders appear on the appropriate attorney's docket report.

8.   The Application was filed on December 11, 2001, by Michael Dodd, under supervision of Adrian Lee, attorneys at Workman Nydegger, along with the Request for Non-Publication. A filing receipt for the Application was mailed on January 17, 2002 by the USPTO, and indicates "Request for Non-Publication Acknowledged." The docketing department information indicates that this filing receipt was received and docketed on January 23, 2002.

9.   Workman Nydegger's computer docketing system shows that although the filing receipt was docketed by our docketing department, there is no corresponding entry to indicate that the Application included a Request for Non-Publication. Under the standard procedures at the time, when an application was filed with a Request for Non-Publication, the title of the corresponding application would include a corresponding parenthetical that noted, in all-caps, that there was a Request for Non-Publication submitted to the USPTO. No such parenthetical appears in the Workman Nydegger computer docketing system, or was ever placed with the Application in our file. Such an omission appears to be the result of a clerical error in identifying and inputting the information on the filing receipt when the filing receipt was received.

10.   Approximately five and a half months after the Application was filed, on May 31, 2002, Microsoft sent to Rick D. Nydegger, the attorney at Workman Nydegger generally responsible for overseeing and managing the Microsoft account, a spreadsheet with instructions relating to approximately seventy-five entries representing pending applications handled for Microsoft by Workman Nydegger. Within these entries, the spreadsheet indicated that it was desired to pursue foreign rights corresponding to a number of the applications noted in those entries. That spreadsheet confirmed that foreign rights were not desired with respect to this Application.
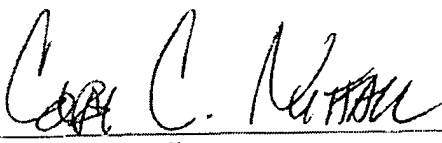
11.   On November 22, 2002, Microsoft sent to Dacia Holt, an assistant to Mr. Nydegger, a communication that Microsoft was considering whether to pursue foreign rights corresponding to the Application. On November 27, 2002, Microsoft confirmed to Ms. Holt that Microsoft had decided to pursue foreign protection by filing several foreign counterpart Applications.

12. Neither Mr. Dodd nor Mr. Lee. the attorneys involved in the preparation of the original Application, were involved in the preparation or filing of the foreign applications, since that function is generally handled by our paralegal staff. Mr. Nydegger, to whom such general instructions and inquiries of the type noted are sent, did not participate in the filing of the original Application. As explained above, the computer docketing system did not contain any indication of the Request for Non-Publication, and therefore did not generate any kind of a reminder or notice related to the Request for Non-Publication. No foreign filing reminder was thus generated flagging the Request for Non-Publication on a docket report, including that of Mr. Nydegger, because it was missing from the docketing entry due to the clerical error that had been made.

13. At no time until at least December 4, 2008 did I or to my knowledge anyone else at Workman Nydegger realize that there had been a statutory abandonment of the Application due to the filing of a foreign application without a prior rescission of the Request for Non-Publication. The entire delay in filing the accompanying Petition to Revive for Unintentional Abandonment was unintentional, from the time of the statutory abandonment until the present. Indeed, immediate steps were taken on my part upon learning of the abandonment to investigate the facts surrounding abandonment of the Application, to determine the manner of remedying the unintentional abandonment of the Application, and to prepare and file the Petition with this Declaration.

14. I declare under penalty of perjury under the laws of the United States of America that to the best of my knowledge the contents of the foregoing declaration are true and correct.

DATED this 2nd day of March, 2009.

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Colby C. Nuttall

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